IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 72 OF 2006

1. Krishna @ Bala Prakash Patil,)
   Age : 35, Occ.Business.)

2. Taqdir Prakash Patil,)
   Age : 25, Occ.Busienss.)

   Both R/at.Old Ambernath Village,)
   Durgadevi pada, Gurukripa Nagar,)
   Ambernath, Dist.Thane.) ...Applicants
(Accused Nos.1 & 2)

V/s.

The State of Maharashtra
(through the Ambernath Police Station. ...Respondent

Shri R.D. Suryawanshi for Applicants.
Ms.M.M. Deshmukh, APP for the State.
Shri V.N. Tayade for Intervenor.

CORAM : V.M. KANADE, J.

DATED : MARCH 7, 2006

P.C. :-

. The applicants are arrested on 19th December, 2005 in connection with an offence which was registered vide C.R.No.I-402/2005 at the Ambernath Police Station, for the offences punishable under Section 364 read with Section 34 of the IPC.

2. In the complaint, it is alleged that the complainant had seen his brother Monusingh alongwith the

present applicants while they were travelling in a sumo vehicle on 5th September, 2005 at 7 p.m. and since then, his brother Monusingh was missing. It is alleged in the complaint that Monusingh, brother of the complainant had refused to accede to the plea of the applicant of designing trousers jeans and selling them in the market without making payment to the merchant from whom those jeans were supposed to be purchased. It is alleged that since the brother of the complainant did not agree, he was kidnapped by them. It is submitted that the complainant was not on good terms with the applicants since they had helped the police in giving the whereabouts of the complainant who was required in some case. It is submitted that there is no recovery made at the instance of the applicants and when the complaint was lodged, the names of the present applicants were not mentioned. It is submitted that the allegation in the complaint is baseless since at the relevant time, the complainant was in the custody and therefore, there was no occasion for him to see the present applicants on 5th September, 2005 at 7 p.m. in the sumo vehicle.

3. The applicants are in custody since 19th December, 2005. The investigation is almost over. It is an admitted position that the complainant was in jail and therefore, it is difficult to accept his submission that he had seen the applicants alongwith the deceased on the said date. There is no other evidence against the present applicants.

4. Learned APP has filed an affidavit-in-reply in which it is sated that the applicant no.1 has criminal antecedents. One of the witnesses has also filed an affidavit. This witness viz. one Sachin Dayaram Gondane has stated that he is witness in the abduction case of said Monusingh. He has stated that he had attended this Court on 20th February, 2006 alongwith the relevant case file in his hand and the file which contained important documents was snatched by the father of the accused and one Vijay Prakash Patil who is close relative of accused Bala Patil.

5. I have given my anxious consideration to the

submissions made by both the learned Counsel for the applicants and the learned APP for the State. In the present case, so far, the chargesheet has not been filed. A statement is made by the complainant that his brother Sonusingh had informed him while he was in prison about the plan of the applicants. He has also informed him that he did not act according to the directions which are given by the present applicants and thereafter, his brother disappeared. Thus, there is some material to implicate the applicants was involved in the said offence and further, they were last seen together by the complainant. The affidavit filed by Sachin who is one of the witness, indicates that if the applicants are released on bail, they are likely to tamper with the evidence. The said brother of the complainant has not been traced. In view of this, from the material which is on record, in my view, this is not a fit case for grant of bail.

. Application for bail is rejected.

(V.M. Kanade, J.)